

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Carl David Malcolm, #288292,)	
)	C/A No.: 9:05-3017-MBS
Plaintiff,)	
)	
vs.)	
)	O R D E R
Robert Ward, Deputy Director of)	
Operations; Richard Bazzle, Warden;)	
Stephen R. Clayton, Associate Warden;)	
James R. Sewell, Major; Eddie O'Cane,)	
S.T.G. Investigator, and South Carolina)	
Department of Corrections,)	
)	
Defendants.)	
)	

Plaintiff Carl David Malcolm is an inmate in custody of the South Carolina Department of Corrections. At the time of the underlying events, he was housed at Perry Correctional Institution in Pelzer, South Carolina. Plaintiff, proceeding pro se, brings this action pursuant to 42 U.S.C. § 1983, alleging violations of his rights under the Eighth and Fourteenth Amendments. Plaintiff also asserts a state court claim for gross negligence.

This matter is before the court on Defendants' motion for summary judgment, which motion was filed June 5, 2006. By order filed June 6, 2006, pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), Plaintiff was advised of the summary judgment procedure and the possible consequences if he failed to respond adequately. Plaintiff filed no response to Defendants' motion. By order filed July 12, 2006, Plaintiff was granted a period of twenty days from the date of the order to respond to the motion for summary judgment. Plaintiff was advised that if he failed to respond, the action would be dismissed for failure to prosecute pursuant to Fed. R. Civ. P. 41(b).

In accordance with 28 U.S.C. § 636(b), this matter was referred to United States Magistrate Judge George C. Kosko for pretrial handling. On August 8, 2006, the Magistrate Judge filed a Report and Recommendation in which he noted that the envelope containing the twenty day order was returned to the Office of the Clerk of Court marked "UNKNOWN AT THIS ADDRESS - RETURN TO SENDER - AT MCCORMICK." The Magistrate Judge further noted that the twenty day order was re-sent to Plaintiff at McCormick Correctional Institution in McCormick, South Carolina. Plaintiff did not respond to the twenty day order, and the envelope containing the twenty day order has not been returned to the Office of the Clerk of Court. Accordingly, the Magistrate Judge recommended that the within action be dismissed for lack of prosecution pursuant to Rule 41(b). Plaintiff filed no objections to the Report and Recommendation.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a *de novo* determination of any portions of the Report and Recommendation to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

It appears that Plaintiff no longer wishes to pursue this action. The court adopts the Report and Recommendation and incorporates it herein by reference. For the reasons stated therein and in

this order, the within action is dismissed pursuant to Rule 41(b) *with prejudice*.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Judge

August 31, 2006

Columbia, South Carolina

NOTICE OF RIGHT TO APPEAL

Plaintiff is hereby notified that he has the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.